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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,243	03/11/2004	Ronald Nordquist	33365/US/4	3548
7590	11/02/2005		EXAMINER POLLICOFF, STEVEN B	
Sean D. Solberg DORSEY & WHITNEY LLP Intellectual Property Department 50 South Sixth Street, Suite 1500 Minneapolis, MN 55402-1498			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/798,243

Applicant(s)

NORDQUIST, RONALD

Examiner

Steven B. Pollicoff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03/11/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. Applicant is reminded of the proper content of an abstract of the disclosure. A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. Correction is required.
2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Collection Container for Medical Devices

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,2,7,8,11, and 13-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Butterworth et al., (U.S. Pat. No. 4,553,669).
5. As to Claim 1, Butterworth discloses a collection container with a collection body (see Fig. 1, Reference 10) comprising a porous composition (see Column 3, Paragraph 1, Lines 4-5). Butterworth also discloses a cap (see Fig. 1, Reference 18) that is removably coupleable with the collection body.
6. As to Claims 2, Butterworth discloses that the collection body and the cap are substantially cylindrical (see Fig. 1 generally).

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7. As to Claim 7, Butterworth discloses that the collection body and cap have shapes that are substantially similar (see Fig. 1 generally).

8. As to Claim 8, Butterworth discloses that the collection body and cap shapes can be square, rectangular, triangular, oval, hexagonal, polygonal, rhombus, parallelogram, and circular (Column 2, Paragraph 3, Lines 27-28).

9. As to Claim 11, Butterworth discloses a collection body (see Fig. 1, Reference 10) comprising a porous composition (see Column 3, Paragraph 1, Lines 4-5), a first and second opening defining a first and second end of the collection body, and a first and second cap (see Fig. 1, References 12 and 18) to be interchangeably removably coupleable with the collection body at the first and second ends (see Fig. 1 generally).

10. As to Claim 13, Butterworth discloses that the collection body and the first and second caps are substantially cylindrical (see Fig. 1 generally).

11. As to Claims 14-17, Butterworth discloses that the first and second caps can have a substantially non-round external outline (see Column 3, Paragraph 4, Lines 46-48).

12. As to Claim 18, Butterworth discloses a collection body and a first and second cap (see Fig. 1, References 12 and 18) to be interchangeably removably coupleable with the collection body at the first and second ends (see Fig. 1 generally).

13. As to Claim 19, Butterworth discloses a collection body (see Fig. 1, Reference 10) comprising a porous composition (see Column 3, Paragraph 1, Lines 4-5).

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14. As to Claim 20, Butterworth discloses that the collection body comprises a solid composition (in the sense that it is repellant to fluids) and the first and second caps comprise a porous composition (see Column 2, Paragraph 3, Lines 23-24) .

15. As to Claim 21, Butterworth discloses that the collection body and the first and second caps comprise a solid composition (in the sense that these elements are repellant to fluids) (see Column 2, Paragraph 3, Lines 23-24).

***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

17. Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Butterworth et al., (U.S. Pat. No. 4,553,669) in view of Kemp et al., (U.S. Pat. No. 5,161,681).

18. Butterworth discloses that the collection body is substantially cylindrical having a cap comprising a cap body and a cap opening removably coupleable with the collection

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body. Butterworth does not disclose that the cap body has a substantially non round external outline (i.e. square, triangular, or hexagonal outline). However, Kemp discloses a square body cap (see Kemp Fig. 7) and that the cap can be any desirable shape that possesses flat surfaces (see Kemp Column 3, Paragraph 1, Lines 11-14) to assist in preventing rolling. Therefore it would have been an obvious matter of design choice to modify Butterworth to include square, triangular, or hexagonal caps since such a modification would have involved a mere change in the shape and since there is no indication that a change in shape affects any critical design or functional element of the container. A change in shape is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

19. Claims 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Butterworth et al., (U.S. Pat. No. 4,553,669) in view of Nelson et al (U.S. Pat. No. 6,371,642).

20. Butterworth discloses a collection container made of a porous composition (see Column 2, Paragraph 3, Lines 23-25). Butterworth does not disclose that the porous composition can be a plastic mesh. However, Nelson discloses a collection container where the porous material is a plastic mesh (see Nelson Fig 5 generally; see also Column 2, Paragraph 6, Lines 65-66). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the collection container of Butterworth to be made out of plastic mesh as taught by Nelson.

Motivation for the modification comes from Nelson that discloses that the plastic mesh is lightweight and can hold a variety of items, including sharp objects such as knives (see

Column 2, Lines 2-5). Nelson also discloses that the plastic mesh is designed to completely envelope the items and allow passage of the cleaning fluid so that when the items are being cleaned they will not be dislodged from the plastic mesh collection container (Column 2, Paragraph 2, Lines 21-22).

21. Claims 10 and 22-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Butterworth et al., (U.S. Pat. No. 4,553,669) in view of Linder (U.S. Pat. No. 3,468,471).

22. Butterworth discloses a collection container comprising a collection body comprising a porous composition, defining an opening and a cap to be removably coupleable with the collection body. The reference also discloses a collection body with a first and second opening and a first and second cap where the collection body and caps are of porous composition or alternatively where the collection body is of solid composition and the caps are of porous composition or alternatively where the collection body and the caps are all of solid composition. Finally Butterworth discloses that the collection body is substantially cylindrical and the caps have a substantially non round external outline.

23. Butterworth does not disclose that the collection container is packaged in a sterile package. However, Linder discloses a sterile package for articles that could include the collection container of the present invention (see Column 1, Paragraph 2, Lines 28-33). Therefore, it would have been obvious to someone of ordinary skill in the art at the time of the invention to modify the collection container of Butterworth to include a sterile package. Given that the present invention is used for medical

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applications, it would be obvious to keep the collection container sterile until needed. An example would be at a hospital where it is important that the environment be clean and sterile, free of harmful agents that may negatively impact doctor's work in surgery and patient's recovery time. Motivation comes from Linder in which it discloses that the bag and its contents be sterilized to prevent bacteria from entering the collection container or from contaminating the contents of the container.

**Conclusion**

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M...

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SBP



Mickey Yu  
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